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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,576	07/10/2003	Mitch T. Mobley	P06365US00	3495
22885	7590	10/04/2005	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/616,576	MOBLEY, MITCH T.	
	Examiner	Art Unit	
	Victor K. Hwang	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

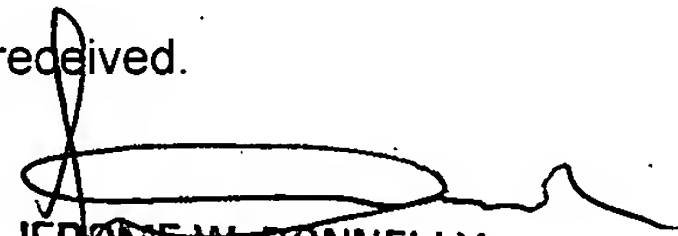
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


JEROME W. DONNELLY
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting.***

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-20 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-20 of copending Application No. 10/617,942. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Objections

3. Claim 15 is objected to because of the following informalities: in claim 15, line 1, "cross bar" presumably should be changed to --handle--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, 11 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Dillard* (US Pat. 5,588,942). *Dillard* discloses a bar assembly that may be used for chin-up exercises. The bar assembly comprises a cross bar 10 and a pair of handles 34,36 slidably mounted on the cross bar. The handles can be held in a selected position along the cross bar by a user's weight. The handles are pivotally mounted to the cross bar. The handles are pivotally mounted relative to the cross bar for movement between locked and unlocked positions. In this instance, the handles 34,36 are pivotally mounted to the cross bar 10 via pins 38,40 for movement. The handles 34,36 could be pivoted while lifting the pins 38,40 out of slots 18 when moving the handles from a locked position (pins in slot) to an unlocked position (pins between slots 18). The handles can swivel about an axis perpendicular to a longitudinal axis of the cross bar. The handles are independently slidable along the cross bar. The arms 80,82 and pins 38 or 40 form a collar that is slidably mounted on the cross bar with each handle mounted to a collar.

6. Claims 1-6 and 11-19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Fall* (US Pat. 4,487,413). *Fall* discloses an exercise assembly comprising a cross bar 12 and a pair of handles 100,102 slidably mounted on the cross bar. The handles are pivotal between a locked (phantom lines in Fig. 2) and unlocked (solid lines in Fig. 2) positions. The handles are movable between an unlocked position for sliding along the cross bar and a locked position for preventing sliding along the cross bar. The handles 100,102 are mounted to the end of rods 110. In the unlocked position, the rod 110 and handles 100,102 can swivel about a vertical axis perpendicular to a longitudinal axis of the cross bar 12. The handles are independently slidable along the cross bar. A user's weight is used to move each handle to a locked position.

7. Claims 1-6, 11 and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Pobran* (US Pat. 4,949,956). *Pobran* discloses a chin up bar assembly comprising a cross bar 12 and a pair of handles 36,38 slidably mounted on the cross bar. The handles are held in a selected position along the cross bar by a user's weight. The handles are pivotally mounted to the cross bar. The handles are pivotal between locked and unlocked positions, meaning the handles can be pivoted between being in a locked position and being in an unlocked position. The handles are independently slidable along the cross bar. Each handle includes a handgrip 42 that is pivotal about a substantially vertical axis, since the strap 40 is capable of twisting about a vertical axis. A locked position is considered to be when the strap 40 is under tension, as applied by a user's weight, such that friction between the strap 40 and the cross bar 12 prevents sliding movement of the strap relative to the cross bar. An unlocked position would be when the strap 40 is not under tension and the user's weight is not being applied to the handle.

8. Claims 1, 6, 7, 11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by *Mojden* (US Pat. 4,620,701). *Mojden* discloses a chin up bar assembly 60 comprising a cross bar 64 and a pair of handles 66,68 slidably mounted on the cross bar. The handles are held in a selected position along the cross bar when a user's weight is applied to the handles. The handles are independently slidable along the cross bar. A pair of collars 70,72 are slidably mounted on the cross bar, with each handle being mounted on one of the collars.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-9 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Weeks* (US Pat. 3,497,882). *Weeks* discloses an exercise assembly comprising a cross bar 31 and a handle (Fig. 2) slidably mounted on the cross bar. The handle can be held in a selected position along the cross bar by a user's weight. The handle includes a grip 78 mounted to a chain 76 such that the grip of the handle can swivel about a vertical axis perpendicular to a longitudinal axis of the cross bar. The handle includes a collar 32 slidably mounted to the cross bar with the grip mounted to the collar. An arm 73 having first and second opposite ends is pivotally mounted to the collar at a point between the opposite ends (see Figs. 5 and 6 for analogous structure). The handgrip is mounted to the first end of the arm whereby the user's weight can pivot the second end of the arm into frictional engagement with the cross bar so as to lock the handle against sliding movement.

Weeks discloses that the hand grip 75 can be used for physical exercise, that the width of the hand grip 78 may be made to accommodate two hands, and that a number of cross bars may be mounted such that a number of devices might be supported (col. 4, lines 49-72).

Weeks does not disclose a second handle slidably mounted on the cross bar, the second handle being independently slidable along the cross bar.

Duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second handle assembly slidably mounted on the cross bar, since duplicating the components of a prior art design is a design consideration within the skill of the art, and since *Weeks* discloses that a number of devices may be provided.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Christensen (US Pat. 3,342,484), *Jacobi* (US Pat. 3,156,465), *Underhill* (US Pat. 3,226,115), *Geiger* (US Pat. 3,825,252), *Meeko* (US Pat. 4,487,412), *Freye* (US Pat. 5,300,002), *Kallassy* (US Pat. 6,217,483 B1) and *Harrell* (US Pat. 6,503,175 B1) disclose exercise devices comprising slidable handles that can be locked in place by a user's weight.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
September 29, 2005

JEROME W. DONNELLY
PRIMARY EXAMINER

